was not prosecuted to judgment, there was not such an election as barred the action in trover. *Machinery Co.* v *Mineral Water and B. Co.,* (Mo. 1915), 171 S. W. 944.

Where, on the sale and delivery of personal property on credit, the title is to remain in the vendor until payment, the vendor, upon non-compliance with the conditions of the sale by the vendee, may either retake the property or may treat the sale as absolute and bring an action for the price, but an assertion of either right is an abandonment of the other. *Davis* v. *Millings,* 141 Ala. 378. This seems to be the universal rule. But just what "an assertion of either right" is, is a question upon which there is much conflict. The weight of authority is probably with the rule which holds that there is an election when one remedy has been prosecuted to judgment even though the judgment remains unsatisfied. *Holt Mfg. Co.* v. *Ewing,* 109 Cal. 353; *Crompton* v. *Beach,* 62 Conn. 25; *Smith* v. *Barber,* 153 Ind. 322; *Bailey* v. *Hervey,* 135 Mass. 172; *Whitney* v. *Abbott,* 191 Mass. 59; *Alden* v. *Dyer,* 92 Minn. 134. Still there are many cases holding that the prosecuting of one action to judgment is not such an election as to bar an action on the other remedy, if the judgment in the first suit remains unsatisfied. *Thomason* v. *Lewis,* 103 Ala. 426; *Forbes Piano Co.* v. *Wilson,* 144 Ala. 586; *McPherson* v. *Acme Lbr. Co.,* 70 Miss. 649; *Printing Press and Mfg. Co.* v. *Publishing Co.,* 56 N. J. L. 676; *Root* v. *Lord,* 23 Vt. 568. There are a few cases which hold contra to the instant case. *Frisch* v. *Wells,* 200 Mass. 429; *Orcutt* v. *Rickenbrodt,* 59 N. Y. Supp. 1008; *Kirk* v. *Crystal,* 103 N. Y. Supp. 17. These establish the rule that the mere bringing of one action by the vendor, even though not prosecuted to judgment, is such an election that it bars action on any other remedy.

CONSTITUTIONAL LAW—CONSTITUTIONALITY OF WEBB-KENYON ACT.—A state statute required all transportation companies to keep a separate book in which was to be entered the name of the consignee of all liquors to be delivered in the state; *held* that this Act was valid and a constitutional exercise of the police power in order that the SEARCH AND SEIZURE ACT prohibiting the sale, bartering, or keeping in possession of certain quantities of liquor for purposes of sale, might be carried into effect. *State of North Carolina* v. *Seaboard Air Line Ry.,* (N. C. 1915), 84 S. E. 283.

The act would be invalid as a regulation of interstate commerce were it not for the WEBB-KENYON ACT, which prohibits shipments of intoxicating liquor from one state to another to be used in violation of law, and brings them within the police power of the state; so it would follow that if the WEBB-KENYON ACT were invalid the state act would fall with it. The constitutional principles involved in the WEBB-KENYON ACT have been discussed in a note in 12 MICH. LAW REV. 585. It could not be argued with force that even if the federal act were valid this act would be invalid and an unreasonable regulation. The obvious intent of the federal act was to enlarge state power so that the states could enforce their policies in regard to intoxicating liquors, and such a regulation is only a reasonable means of carrying into effect a power already granted, and lies within the legislative discretion. *Dewey* v.

R. R., 142 N. C. 400; SUTHERLAND, STATUTORY CONSTRUCTION, 427. Much more stringent and confiscatory state laws have been upheld in late years. *Patstone* v. *Pa.*, 232 U. S. 138; *Siez* v. *Hesterburg*, 211 U. S. 31; *Lawton* v. *Steel*, 152 U. S. 133. In the late case of *Gherna* v. *State*, (Arizona) 146 Pac. 494, a constitutional amendment prohibiting the sale of intoxicating liquors was upheld as a valid exercise of the police power even though it caused a loss of investments already made in those commodities. There was also a clause in this amendment which prohibited the importation of intoxicating liquors into the state, but the court was correct in refusing to consider the validity of this section, and of the WEBB-KENYON ACT as the defendant was indicted for selling, not importing, and the court declared the sections separable. The question on the WEBB-KENYON ACT will no doubt arise soon in Arizona under the other clause of the constitutional provision.

CONTRACTS—CONSTRUCTION OF LIMITING LIABILITY CLAUSE.—Appellee shipped certain goods over appellant's road under a contract limiting the liability of the appellant in case of injury or loss to $100. Part of the goods were injured, the actual value of which was over the stipulated amount. The question was whether the whole value up to $100 or only a proportionate part could be recovered. *Held*, that the whole loss up to $100 could be recovered. *Central of Georgia Ry. Co.* v. *Broda*, (Ala. 1914) 67 So. 437.

The court in deciding the case admitted that the cases and text writers are in direct conflict on the subject, and decides that the contract should be construed strictly against the railroad company and in favor of the shipper. The reasoning of the courts which follow this side of the question is that the parties do not agree as to the value of the goods but only as to the amount the carrier shall pay in case of injury and hence if the injury reaches the limit, that amount should be paid and not a proportionate amount as would be the case if all the goods were valued at the stipulated price. In addition to the courts cited in the principal case the following also hold the same view. *Huguelet* v. *Warfield*, 65 S. E. 985; *Carleton* v. *N. Y. C. & H. R. R. Co.*, 117 N. Y. Supp. 1021; *Visanka* v. *Southern Exp. Co.*, 75 S. E. 962. Other courts take the view that the contract does fix the whole value of the goods and in case of injury only a proportionate amount should be allowed as damages. HUTCHINSON, CARRIERS, § 429; *Goodman* v. *M. K. & T. Ry. Co.*, 71 Mo. App. 460; *Shelton* v. *Canadian Northern Ry.*, 189 Fed. 153.

CORPORATIONS—IMPLIED POWERS—SALE OF LIQUOR BY CLUB.—The Country Club in Austin, Texas was duly and legally incorporated under the state law. The charter authorized the corporation "to support and maintain a golf club and other innocent sports in connection therewith." A suit was brought to enjoin the club from maintaining a buffet and dispensing intoxicating liquors to its members upon the ground that such acts were not within the implied powers of the corporation. *Held* that an injunction would issue. *State* v. *Country Club* (Tex. 1915), 173 S. W. 570.

It is a general rule that a corporation has only such powers as are granted to it by its charter either expressly or as incidental to its existence. *Cumber-*